

If the sale of a product or service is conducted at the ATM, such as a statement of account activity (see Fin C §13080(d)), the total price of the product or service and any surcharge for using the ATM must be disclosed to the customer. Fin C §13080(b). If this disclosure is not made before the customer is obligated to pay (*i.e.*, when the transaction is completed), the customer must be given the opportunity to cancel the transaction without incurring the surcharge. Fin C §13080(b).

When a customer using an ATM that is not issued by the operator of the ATM (*e.g.*, a bank ATM located in a supermarket) and a surcharge is imposed, the operator must disclose that the customer may be charged additional fees by the customer's financial institution. Fin C §13080(c).

### **C. [§5.153] Price Discrimination Based on Gender**

All business establishments are prohibited from discriminating with respect to the price charged for similar or like-kind services, based on a person's gender. CC §51.6(b). Price differences based specifically on the amount of time, difficulty, or cost of providing the services are not prohibited. CC §51.6(c). A person who is subject to prohibited price discrimination based on gender may recover actual damages, which may be trebled, as well as attorney's fees. CC §§51.6(d), 52(a).

Specified businesses, *i.e.*, drycleaners and laundries, barbers and hair salons, and tailors or other businesses providing clothing alternations, are required to clearly and conspicuously disclose to customers, in writing, the pricing for each standard service provided. CC §51.6(f). A business establishment that fails to correct a violation of this requirement within 30 days of receiving written notice of the violation is liable for a civil penalty of \$1000. CC §51.6(f)(5).

## **XXI. LANDLORD-TENANT ISSUES**

### **A. Suits by Tenants**

#### **1. [§5.154] Breach of Covenant of Habitability**

The tenant may sue the landlord for a breach of the implied covenant of habitability to recover part of the rent paid, even though the tenancy has been terminated and the tenant has quit the premises. *Quevedo v Braga* (1977) 72 CA3d Supp 1, 140 CR 143.

Civil Code §1942.4(b) provides that any landlord who demands or collects rent when all four listed conditions (the same conditions set forth in CC §1942.3(a) relating to a breach of habitability requirements) exist is li-

able to the tenant for actual damages, for special damages of not less than \$100 nor more than \$5000, for allowable costs of suit, and for reasonable attorneys' fees in an amount fixed by the court. Additionally, a court that awards damages under CC §1942.4(b) may also order the landlord to abate nuisances and repair substandard conditions that significantly or materially affect the health or safety of the occupants. CC §1942.4(c). The tenant need not undertake any other remedy before exercising rights under this statute, and this remedy may be utilized in addition to any other remedy provided by the rental agreement or other applicable statutory or common law. An action under this statute may be maintained in small claims court if the damages claimed are within the jurisdictional limit.

## **2. [§5.155] Breach of Covenant of Quiet Enjoyment**

The tenant may sue the landlord for a breach of the implied covenant of quiet enjoyment and need not vacate the property before bringing the action. See *Marchese v Standard Realty & Dev. Co.* (1977) 74 CA3d 142, 141 CR 370; *Guntert v Stockton* (1976) 55 CA3d 131, 126 CR 690.

## **3. [§5.156] Tortious or Criminal Acts of Landlord**

The landlord is not immune from liability to a tenant on general tort principles. A tenant may sue a landlord in tort for damages resulting from a breach of the implied covenant of habitability. *Stoiber v Honeychuck* (1980) 101 CA3d 903, 162 CR 194 (court found causes of action stated for nuisance, intentional infliction of emotional distress, negligent violation of statutory duty, and constructive eviction).

A landlord may even be liable for failure to take reasonable steps to protect tenants from criminal activity, and for misrepresenting the safety of the premises to be rented. *O'Hara v Western Seven Trees Corp.* (1977) 75 CA3d 798, 142 CR 487. However, a landlord has no statutory or common law duty to warn a prospective tenant of the presence of a vicious dog in the neighborhood. *Wylie v Gresch* (1987) 191 CA3d 412, 236 CR 552 (dog was kept by strangers to the landlord on premises over which the landlord had no control).

The landlord is not strictly liable in tort for injuries resulting from a latent defect in the rental premises. *Peterson v Superior Court* (1995) 10 C4th 1185, 1210, 43 CR2d 836, overruling *Becker v IRM Corp.* (1985) 38 C3d 454, 213 CR 213.

In addition, when a landlord commits a criminal action by creating an apprehension of harm by using threats, force, or menacing conduct, or committing theft (Pen C §484), extortion (Pen C §518), or illegal entry (see

CC §1954), the tenant who prevails in a civil action (including a proceeding in small claims court) is entitled to a civil penalty of up to \$2000 for each violation. CC §1940.2.

#### **4. [§5.157] Retaliatory or Unlawful Eviction**

A landlord who violates CC §1942.5 is liable to the tenant in a civil action for (a) actual damages, and (b) punitive damages of not less than \$100 nor more than \$1000 for each retaliatory act if the landlord has been guilty of fraud, oppression, or malice in the act. CC §1942.5(f). Imposition of a retaliatory rent increase entitles tenants (including mobilehome tenants) to punitive damages under CC §1942.5. See *Rich v Schwab* (1998) 63 CA4th 803, 811, 814–816, 75 CR2d 170. A landlord's genuine intent to withdraw the property from the rental market, however, will overcome a retaliatory eviction defense under CC §1942.5(a). *Drouet v Superior Court* (2003) 31 C4th 583, 588, 3 CR3d 205.

When punitive damages are fixed by statute, as under CC §1942.5, there is no requirement that tenants also provide evidence of the landlord's financial condition, nor any requirement that the tenant vacate the premises in order to collect punitive damages. *Rich v Schwab, supra*, 63 CA4th at 817.

A landlord who evicts a tenant so that the landlord or the landlord's immediate relative may occupy the unit is required to maintain residence in the unit for at least six continuous months. CC §1947.10(a). If the court determines that the eviction was based on fraudulent intention by the landlord or the landlord's immediate relative to not fulfill this six-month requirement, the court may order the landlord to pay treble the cost of relocating the tenant from his or her existing unit back to the previous unit, and may order the landlord to pay treble the amount of any increase in rent the tenant has paid. CC §1947.10(a). If the tenant decides not to relocate back into the previous unit, the court may order the landlord to pay treble the amount of one month's rent paid by the tenant for the unit from which he or she was evicted and treble the amount of any costs incurred in relocating to a different unit. The court must also award the prevailing party attorneys' fees and court costs. CC §1947.10(a).

#### **5. [§5.158] Violation or Evasion of Rent Control Ordinance**

A tenant may seek damages against the landlord for termination of the tenancy in violation of the local rent control ordinance. *Castillo v Friedman* (1987) 197 CA3d Supp 6, 243 CR 206; see §5.165.

A mobile home park landlord may not evade rent control ordinances by

granting dealer leases to mobile home dealers and having the purchasers take over those leases. *People ex rel Kennedy v Beaumont Inv., Ltd.* (2003) 111 CA4th 102, 119, 3 CR3d 429 (personal residency is a prerequisite for exemption from rent control).

#### **6. [§5.159] Transient Occupancy**

A landlord may not require tenants of a hotel, motel, residence club, or other facility defined in CC §1940(b) to move out or check out and then re-register if the purpose of this requirement is to have occupants maintain transient occupancy status. CC §1940.1(a). A landlord who violates this section is liable for a civil penalty of \$500 in addition to any remedies provided by local ordinance. CC §1940.1(b).

#### **7. [§5.160] Separate Utility Meters**

When a landlord fails to disclose that a tenant's gas and electric meters measure more than is actually used by the tenant and fails to make arrangements for payment for gas and electric services, an aggrieved tenant may bring an action against the landlord for reimbursement and other relief. CC §1940.9.

#### **8. [§5.161] Notice of Demolition**

The owner of a residential dwelling (or the owner's agent), who applies to any public agency for a permit to demolish the dwelling, must give written notice of this fact to the current tenants and to any prospective tenants before entering into a rental agreement with the prospective tenants or requiring or accepting any payment from them. CC §1940.6(a). The notice must include the earliest possible approximate date on which the owner expects the demolition to occur and the approximate date the owner will terminate the tenancy. The demolition may not occur before the earliest possible approximate date noticed. CC §1940.6(b).

A tenant may bring an action against the landlord in a court of competent jurisdiction for the landlord's failure to comply with these requirements. CC §1940.6(c). The remedies the judge may order include, but are not limited to, the actual damages suffered and a civil penalty of up to \$2500. CC §1940.6(c)(1)–(2) (prospective tenant is also entitled to recover moving expenses). The prevailing party in the action is entitled to reasonable attorney's fees. CC §1940.6(c)(3). These remedies are cumulative to other available remedies. CC §1940.6(d).

## **B. Security Deposits**

### **1. [§5.162] Use of Security Deposit**

The definition of “security” in CC §1950.5(b) is “any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to” (1) compensating the landlord for defaults in rent, (2) repairing damages other than ordinary wear and tear, (3) cleaning the premises on termination as necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy, and (4) remedying future defaults by the tenant in any obligation under the lease to restore, replace, or return personal property or appurtenances, other than ordinary wear and tear, if the lease authorizes this use of the security deposit. It includes any payment by the tenant over and above legitimate rent. *Granberry v Islay Invs.* (1984) 161 CA3d 382, 207 CR 652. See also *People v Parkmerced Co.* (1988) 198 CA3d 683, 244 CR 22. The statute specifies how proof of the existence and amount of a security deposit may be established. CC §1950.5(n). In addition to the security deposit, a landlord is entitled to charge an applicant a screening fee that must be no greater than the cost of gathering information concerning the applicant, and in any case no more than \$30. CC §1950.6. This fee is specifically excepted from the definition of “security.” CC §1950.5(b).

### **2. [§5.163] Inspection at Termination of Tenancy**

Within a reasonable time after either party gives the other notice of intent to terminate the tenancy, or before the end of the lease term, the landlord must notify the tenant, in writing, of his or her option to request an initial inspection of the premises, and of his or her right to be present at the inspection. CC §1950.5(f)(1) (not applicable when the tenancy is terminated under CCP §1161(2)–(4)). The purpose of this inspection is to allow the tenant to avoid deductions from the security deposit by remedying identified deficiencies in a manner consistent with the parties’ rights and obligations under the rental agreement. CC §1950.5(f)(1). If the tenant chooses not to request an initial inspection, the landlord’s duties with respect to the inspection are discharged. If the tenant requests an inspection, the parties must attempt to schedule the inspection at a mutually acceptable date and time. CC §1950.5(f)(1). Based on the inspection, the landlord must give the tenant an itemized statement specifying the repairs or cleaning that are proposed to be the basis of any deductions from the security deposit the landlord intends to make. CC §1950.5(f)(2). Between the time of the initial inspection and the termination of the tenancy, the tenant may remedy the identified

deficiencies in order to avoid deductions from the security deposit. CC §1950.5(f)(3).

### 3. [§5.164] Return of Security Deposit

The landlord is entitled to retain security deposit money only to the extent reasonably necessary for the purposes specified in CC §1950.5(b), CC §1950.5(e). He or she is not obligated to pay interest on a tenant's security deposit (*Korens v R.W. Zukin Corp.* (1989) 212 CA3d 1054, 261 CR 137) unless the deposit has been retained in bad faith (see CC §1950.5(l)).

The statute specifies certain damages, wear and tear, and defective conditions for which the landlord may *not* assert a claim against the tenant or the security deposit. CC §1950.5(e). A tenant who vacates is not obligated to restore the rental premises to the landlord in a better condition than when the tenancy commenced. *Haupt v La Brea Heating Co.* (1955) 133 CA2d Supp 784, 284 P2d 985. If the tenant exercises ordinary care in the preservation of the premises, the landlord cannot deduct for normal deterioration in the premises by reason of the passage of time and use. See *Kanner v Globe Bottling Co.* (1969) 273 CA2d 559, 565, 78 CR 25.

The landlord must furnish the tenant with any remaining portion of the security deposit, in addition to an itemized statement indicating the amount of the security deposit and its disposition; this must be done within 21 days after the tenant has vacated the premises. CC §1950.5(g)(1). In addition to this statement, the landlord must include copies of documents showing expenses incurred by the landlord in doing the necessary work. CC §1950.5(g)(2). Generally, if the tenant waives these provisions or the repairs and cleaning together are under \$125, the landlord need not comply. CC §1950.5(g)(4). If the landlord cannot do the work before the 21 days have elapsed, he or she must provide the tenant with a good faith estimate, followed by the actual documentation within 14 days of completion. CC §1950.5(g)(3).

The statute sets forth extensive rights and duties of a landlord's successor in interest regarding the tenant's security deposit. CC §1950.5(h)–(l).

### 4. [§5.165] Security Deposit Issues in Small Claims Court

Security deposits can arise as an issue in several contexts. Some judges differentiate deposits of the last month's rent from cleaning and other security deposits.

In a tenant's suit for return of a deposit, if it is determined that the landlord retained any portion of the deposit in bad faith, the court may

award the tenant statutory damages of up to twice the amount of the security, in addition to actual damages. CC §1950.5(l). The court may award damages for bad faith whenever the facts warrant such an award, whether or not the injured party has specifically requested relief. CC §1950.5(l). The landlord has the burden of proof as to the reasonableness of all amounts claimed. CC §1950.5(l). Landlords who fail to comply with CC §1950.5(g) (requiring return of unused security deposit within three weeks after tenant vacated, as well as statement concerning disposition of security) in good faith are not precluded from recovering for unpaid rent, repairs, and cleaning. *Granberry v Islay Invs.* (1995) 9 C4th 738, 747, 38 CR2d 650.

No lease or rental agreement provision may characterize the security deposit as “nonrefundable.” CC §1950.5(m). Local laws governing the rate of increases in security deposits are not preempted by CC §1950.5. *People v Tannenbaum* (1994) 23 CA4th Supp 6, 10, 29 CR2d 534.

#### **C. [§5.166] Interruption of Utilities**

A landlord may not intentionally deprive the tenant of utilities for the purpose of eviction. CC §789.3(a); *Hale v Morgan* (1978) 22 C3d 388, 149 CR 375. If the landlord does intentionally deprive the tenant of utilities, the court must award the tenant actual damages and a penalty of up to \$100 a day for each day involved, but not less than \$250 for each separate cause of action. CC §789.3(c). However, the court should exercise its discretion in determining the size of the penalty to avoid a constitutionally excessive penalty. See 22 C3d at 404. The term “tenant” for purposes of this statute means all the occupants of a rental unit and not each individual. *Kinney v Vaccari* (1980) 27 C3d 348, 357, 165 CR 787.

#### **D. [§5.167] Entry by Landlord**

California law restricts the landlord’s entry to the rental unit. CC §1954. The landlord may enter only in the case of emergency: to make necessary or agreed repairs; to supply services; to exhibit the dwelling to prospective tenants, purchasers, workers, or mortgagees; to make an inspection under CC §1950.5(f) on termination of the tenancy, when abandoned or surrendered by the tenant, or when under a court order. Entry, except when the premises are abandoned or an emergency exists, is limited to normal business hours, and the tenant must be given reasonable notice, including the date, approximate time, and purpose of the entry, in writing. CC §1954(b), (d).

The notice may be personally delivered to the tenant, left with someone

of a suitable age and discretion at the premises, or left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice; 24 hours is deemed reasonable notice. The notice may also be mailed to the tenant. Mailing of the notice at least six days before an intended entry is deemed reasonable notice. CC §1954(d)(1).

If the purpose of the entry is to exhibit the rental unit to prospective or actual purchasers, the notice may be given orally, in person, or by telephone, if the landlord (or the landlord's agent) has notified the tenant, in writing, within 120 days of the oral notice that the property is for sale and that the landlord or agent may contact the tenant orally for purposes of entry; 24 hours is deemed reasonable notice. The notice must include the date, approximate time, and purpose of the entry. At the time of entry, the landlord or agent must leave written evidence of the entry inside the unit. CC §1954(d)(2).

Unlawful entry and denial of access to the tenant constitutes a forcible entry and detainer. See CCP §§1159–1160; *Winchester v Becker* (1906) 4 CA 382, 88 P 296. Forcible entry and detainer law also applies to a landlord who enters and detains real property under an invalid writ of execution. *Bedi v McMullan* (1984) 160 CA3d 272, 206 CR 578.

#### **E. [§5.168] Rent Control Laws**

Several cities (*e.g.*, San Francisco, Berkeley, Beverly Hills, Santa Monica, Los Angeles, El Monte) have adopted rent control ordinances of one form or another. The leading case on the subject is *Birkenfeld v Berkeley* (1976) 17 C3d 129, 130 CR 465. The Berkeley ordinance under review in that case presented so many issues that the case is particularly valuable as an exposition of what is permissible and impermissible in this area.

In brief summary, a unanimous Supreme Court concluded:

- Cities and counties can enact rent control ordinances. Enacting them does not depend on emergencies, but can be justified by the usual police power purposes, *e.g.*, preventing exploitation of a housing shortage. The state can preempt the field, but it has not done so.
- The local ordinance may limit the grounds for termination of periodic tenancies as long as the grounds are reasonably related to the police power objective. Code of Civil Procedure §§1161, 1161a do not preempt because they are procedural, as distinct from the substantive grounds of the ordinance.
- The governmental system for reviewing and passing on rent adjustments

must provide an adequate procedure without unreasonable delay. Otherwise the rent ceilings, if indefinite in term, would become confiscatory.

In *Getz v City of West Hollywood* (1991) 233 CA3d 625, 284 CR 631, the court held that a landlord who accepted rental payments from a person whom he knew was residing in a shared residential unit, but who was not one of the original tenants, could not raise the rent under a vacancy decontrol provision of a local rent control ordinance at the time that the last original tenant voluntarily vacated the premises. There was substantial evidence that a landlord-tenant relationship had been created with the new “tenant” by the landlord’s acceptance of rent directly from him for the six months of concurrent tenancy with one of the original tenants. This precluded a finding of vacancy that would have permitted a vacancy increase.

A landlord who undertakes to perform necessary repairs on rental property does not cause a diminution in housing services within the meaning of the San Francisco rent control ordinance if the repairs only temporarily interfere with the tenant’s use of the housing but not with the right to occupancy. *Golden Gateway Ctr. v San Francisco Residential Rent Stabilization & Arbitration Bd.* (1999) 73 CA4th 1204, 1213, 87 CR2d 332.

The Supreme Court has upheld the power of a rent control board to adjudicate excess rent claims and authorize restitutive-type awards; however, a rent board may not constitutionally authorize the withholding of rent, nor may it award triple damages. *McHugh v Santa Monica Rent Control Bd.* (1989) 49 C3d 348, 261 CR 318.

A rent control ordinance that is amended to raise the annual unit registration fee but does not allow the landlords to pass the increase on to the tenants does not necessarily deprive landlords of their constitutionally guaranteed “just and reasonable rate of return.” *West Hollywood Concerned Citizens v City of West Hollywood* (1991) 232 CA3d 486, 283 CR 470.

If the maximum allowable rental rates established by the local ordinance are preempted by the United States Department of Housing and Urban Development (HUD) because the property involved is financed with a mortgage insured by HUD, the rental rates revert to those set by the local ordinance on extinguishment of the HUD-insured mortgage. *Sea Castle Apartments, Ltd. v Santa Monica Rent Control Bd.* (1991) 228 CA3d 1540, 279 CR 672.

The proper base rent for a rental unit that was not subject to the rent control law at the time the law became effective, but subsequently became

so, is the first rent charged after the effective date of the rent control law and not the rent charged one year before the law's date of enactment. Thus, the base rent of an owner-occupied condominium that was later rented out after enactment of the rent control law is the first rent charged to the new tenants. *Givoni v Santa Monica Rent Control Bd.* (1991) 234 CA3d 94, 285 CR 567.

Various statutes affect local rent control ordinances, *e.g.*,

- The penalties and sanctions that may be imposed against a landlord under a local rent control ordinance are limited by CC §1947.7.
- A local rent control ordinance that requires the registration of rents must comply with CC §1947.8.
- The amount of rent that may be charged may be established under CC §§1954.52 and 1954.53.

A landlord who charges rent to a tenant in excess of the certified lawful rent ceiling under a local rent control ordinance must refund the excess to the tenant on demand. If the landlord refuses to refund the excess rent and if the court determines that the landlord willfully or intentionally charged rent in excess of the rent ceiling, the court must award the tenant a judgment for the excess amount of rent and may treble this amount. The court must also award the prevailing party attorney's fees and court costs. CC §1947.11(a).

#### **F. [§5.169] Void Lease Provisions**

Certain written lease provisions are void and unenforceable. Civil Code §1953(a) provides that a provision that *waives or modifies* any of the following is void:

- Tenant's rights or remedies regarding security deposits (CC §1950.5) and limitations on the landlord's entry into the dwelling unit (CC §1954).
- Tenant's right to assert a cause of action against the landlord in the future.
- Tenant's right to a notice or hearing required by law.
- Tenant's procedural rights in litigation as a tenant.
- Tenant's right to have the landlord exercise a duty of care to prevent personal injury or personal property damage when that duty is imposed by law.

#### **G. [§5.170] Abandonment of Leased Premises**

If the landlord believes the tenant has abandoned the premises, the

landlord must serve a Notice of Belief of Abandonment (CC §1951.3(d)) on the tenant before retaking possession of the premises. The notice may be served when rent has been due and unpaid for at least 14 days and the lessor reasonably believes the tenant has abandoned the premises. CC §1951.3(b). The lease may be terminated not less than 15 days after personal delivery of the notice to the tenant and 18 days if the notice is mailed to the tenant.

#### **H. [§5.171] Disposition of Personal Property**

On occasion the issue will arise as to the proper disposition of personal property remaining in the rented premises after a tenant's tenancy is terminated through surrender or abandonment and the tenant has vacated the property. See CC §§1980–1991.

Under CC §1983, the landlord must give personal notice to the tenant and to any other person the landlord reasonably believes to be the owner of the personal property. The notice must describe the personal property and inform the recipient that reasonable storage charges may be charged before release of the personal property, where the property may be claimed, and the date before which the property must be claimed. The tenant or person believed to be the owner of the property must be given 15 days to claim the property if notice is personally served, or 18 days if mailed. CC §1983. The notice form for a person other than the tenant is at CC §1985.

If the landlord reasonably believes the property is worth less than \$300, the landlord may sell, keep, or destroy the property at the expiration of the notice period. If the value is in excess of \$300, the landlord must sell the goods at a public sale following publication of the sale. After the costs of storage, notice, publication, and the sale are deducted from the proceeds of the sale, the balance must be paid to the county. See CC §§1988–1990.

Civil Code §1965 sets forth procedures for disposition of personal property on the tenant's request. It does not apply when disposition has been initiated or completed under the procedures set forth in CC §§1980–1991. CC §1965(c). A landlord who retains personal property in violation of the section is liable to the tenant in a civil action for (1) actual damages not to exceed the value of the personal property if it is not timely surrendered, (2) an amount not to exceed \$250 for each bad faith violation of the section, and (3) reasonable attorneys' fees and costs as the prevailing party. CC §1965(e). This remedy is not exclusive. CC §1965(f).

### **XXII. LIABILITY FOR FOOD CONTAMINATION**

#### **A. [§5.172] Natural Versus Foreign Substance**

Small claims court judges occasionally hear claims of injury due to